S.B.CIVIL WRIT PETITION NO.4774/1995.

14.08.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Arun Bhandari, for the petitioners.
Mr.Road Mal Jain, for the respondent No.4.

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This application was filed by the respondent on 22.03.2006 wherein it was disclosed that the non-petitioner No.2 Nathu Ram died on 27.04.1999 during the pendency of the writ petition and that the non-petitioner No.3 Panchu Ram also died on 12.03.1999 during the pendency of the writ petition. It is submitted in the application that the petitioners as well as the deceased non-petitioners are residents of same village and are neighbours and that the fact about their death was within the knowledge of the petitioners and in spite of the above the petitioners have failed to bring on the record the legal representatives of the deceased non-petitioners No.2 and 3.

In response to the above application, learned counsel for the petitioner after receiving the copy of the application sought time from the court on 04.04.2006, 04.05.2006, 17.05.2006, 25.05.2006 and 28.07.2006 to move an application for substitution but the names of legal representatives of the deceased non-petitioners No.2 and 3 have not been disclosed so far, however, all that has been submitted is by means of an application purported to have been filed under Order 22 Rule 2 CPC by the petitioners on 11.07.2006 wherein it has been submitted

that respondent No.4 represents the estates of the deceased non-petitioner No.2 Nathu Ram and non-petitioner No.3 Panchu Ram. It has been prayed in the said application that the name of Nathu Ram and Panchu Ram may be deleted and that the petitioners may be allowed to prosecute against Kishan Lal alone.

Another application came to be filed by the petitioner on 11.07.2006 wherein it has been submitted that the petitioner No.1 Birdhi Chand also died during the pendency of the writ petition on 12.03.2006. The name of the legal representatives of the deceased petitioner Birdhi Chand have been disclosed at para 3 of the said application. It has been prayed in the said application that the legal representatives of the deceased petitioner Birdhi Chand may be allowed to be taken on record.

So far as the application for substitution of the deceased petitioner Birdhi Chand is concerned, the same is allowed. The legal representatives, mentioned at para 3 of the application, are ordered to be substituted in place of the deceased petitioner No.1.

So far as the application filed by the petitioners under Order 22 Rule 2 CPC is concerned, it has not been disclosed whether the non-petitioner No.2 and 3 Nathu Ram and Panchu Ram are survived by any heirs on whom the estate of the deceased Nathu Ram and Panchu Ram would devolve upon.

The submission of the learned counsel for the petitioners that the estate not having been partitioned,

Kishan Lal, non-petitioner No.4 would represent the estate of Nathu Ram and Panchu Ram, in my opinion, cannot be accepted. Since the names and details of the legal representatives of Nathu Ram and Panchu Ram have not been disclosed by the learned counsel for the petitioners, and it has also been stated that they are not survived by any heir on whom the estate of deceased Nathu Ram and Panchu Ram would devolve upon.

The submission of the petitioner with regard to the representation of estate of deceased by Kishan Lal, non-petitioner No.4 cannot be accepted. The legal representatives who are the heirs of the non-petitioners No.2 and 3 have a distinct right to the shares of the deceased and Kishan Lal does not represent the estate of the deceased non-petitioners. In the absence of the legal representatives of the deceased non-petitioners No.2 and 3 who died in the year 1999 and the fact about the knowledge of the death of non-petitioners No.2 and 3 not having been denied by the petitioners and no application for substitution having been filed, there is no escape from the conclusion that the writ petition abates as a whole since it arises out of the judgment and decree passed by the learned courts below and the estate of the deceased non-petitioners No.2 and 3 not being represented by their heirs, in case this writ petition is allowed in their absence would result in conflicting decrees.

In case, any decree is passed against Kishan Lal, non-petitioner No.4 the legal representatives of the deceased non-petitioners No.2 and 3 Nathu Ram and Panchu Ram cannot be said to be bound by the said decree and

there is every possibility of there being conflicting decrees as the heirs of the deceased Nathu and Panchu are not before the court, in such an event, the writ petition abates as a whole.

In view of the above, the application filed by the petitioners under Order 22 Rule 2 CPC stands disposed of. The application filed by the respondents dated 22.03.2006 also stands disposed of.

Consequently, the writ petition as well the stay application and all the three applications stands disposed of, as above.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.